

STATE OF MICHIGAN  
 DEPARTMENT OF CORRECTIONS  
 PROCUREMENT  
 P.O. BOX 30003, LANSING, MI 48909  
 OR  
 206 E MICHIGAN AVE, LANSING, MI 48933

**NOTICE OF CONTRACT NO. 472B4300061**  
 between  
**THE STATE OF MICHIGAN**  
 and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Grand Strategy, LLC 15038 73 <sup>rd</sup> Street South Haven, MI 49090	Greg Fones	<a href="mailto:gregf@grandstrategyllc.com">gregf@grandstrategyllc.com</a>
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(877) 282-2391	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR:	Corrections	Lanny Akers	(517) 780-5169	<a href="mailto:akersl@michigan.gov">akersl@michigan.gov</a>
BUYER:	Corrections	Lisa Lehnert	(517) 335-4904	<a href="mailto:LehnertL@michigan.gov">LehnertL@michigan.gov</a>

CONTRACT SUMMARY:			
<b>DESCRIPTION:</b>			
Polyester Mesh Netting Fabric			
<b>INITIAL TERM</b>	<b>EFFECTIVE DATE</b>	<b>INITIAL EXPIRATION DATE</b>	<b>AVAILABLE OPTIONS</b>
Three year	July 22, 2014	July 21, 2017	Two – one year options
<b>PAYMENT TERMS</b>	<b>F.O.B</b>	<b>SHIPPED</b>	<b>SHIPPED FROM</b>
Net 45 Days	Destination	45 Days ARO	
<b>ALTERNATE PAYMENT OPTIONS:</b>			<b>AVAILABLE TO MIDEAL PARTICIPANTS</b>
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> YES    X NO
<b>MINIMUM DELIVERY REQUIREMENTS:</b>			
5,000 yards			
<b>MISCELLANEOUS INFORMATION:</b>			
<b>ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION:</b>		\$688,800.00	

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the solicitation #0472148614B00001043. Orders for delivery will be issued directly by the Department of Corrections through the issuance of a Purchase Order Form.

Notice of Contract #: 472B4300061

FOR THE CONTRACTOR:

Grand Strategy, LLC

Firm Name

*Greg Jones*

Authorized Agent Signature

GREG JONES

Authorized Agent (Print or Type)

Date

7-21-14

FOR THE STATE:

*Jeri Ann Sherry*

Signature

Jeri Ann Sherry, Deputy Director

Name/Title

Department of Corrections

Enter Name of Agency

6/11/14

Date



**STATE OF MICHIGAN  
Department of Corrections  
Procurement**

Contract 472B4300061  
Polyester Mesh Netting Fabric

Buyer Name: Lisa Lehnert  
Buyer Direct Telephone Number: (517) 335-4904  
E-Mail Address: [LehnertL@michigan.gov](mailto:LehnertL@michigan.gov)

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### **Definitions**

**This section provides definitions for terms used throughout this document.**

**Business Day** - whether capitalized or not, means any day other than a Saturday, Sunday, State employee temporary layoff day, or State-recognized legal holiday (as identified in the Collective Bargaining Agreement for State employees) from 8:00am through 5:00pm Eastern Time unless otherwise stated.

**Buyer** – the MDOC-Procurement employee identified on the cover page of this RFP.

**Chronic Failure** - as defined in applicable Service Level Agreements.

**Contract** – based on this RFP, an agreement that has been approved and executed by the awarded bidder, the MDOC-Director or designee, and the State Administrative Board.

**Contractor** – the awarded bidder after the Effective Date.

**Days** - Business Days unless otherwise specified.

**Deleted, Not Applicable** - the section is not applicable or included in this RFP. This is used as a placeholder to maintain consistent numbering.

**Deliverable(s)** - physical goods or commodities as required or identified in a Statement of Work.

**Eastern Time** – either Eastern Standard Time or Eastern Daylight Time, whichever is prevailing in Lansing, Michigan.

**Effective Date** - the date that a binding contract is executed by the final party.

**Final Acceptance** - has the meaning provided in Section 2.8.7, Final Acceptance, unless otherwise stated in Article 1.

**Key Personnel** - any personnel designated as Key Personnel in Sections 1.3.3, Staff, Duties, and Responsibilities, and 2.4.2, Contractor Key Personnel, subject to the restrictions of Section 2.4.2.

**Post-Industrial Waste** - industrial by-products which would otherwise go to disposal and wastes generated after completion of a manufacturing process, but does not include internally generated scrap commonly returned to industrial or manufacturing processes.

**Purchase Order** - a written document issued by the State that requests full or partial performance of the Contract.

**State** - the State of Michigan.

**State Location** - any physical location where the State performs work. State Location may include state-owned, leased, or rented space.

**Stop Work Order** - a notice requiring the Contractor to fully or partially stop work in accordance with the terms of the notice.



**Subcontractor** - a company or person that the Contractor delegates performance of a portion of the Deliverable(s) to, but does not include independent contractors engaged by the Contractor solely in a staff augmentation role.

**Unauthorized Removal** - the Contractor's removal of Key Personnel without the prior written consent of the State.

## **Article 1 – Statement of Work**

### **1.1 Project Identification**

This is a Contract issued by the Michigan Department of Corrections (MDOC), Michigan State Industries hereinafter known as MSI to purchase polyester mesh netting fabric.

#### **1.1.1 Project Request**

This is a Statement of Work (SOW) for polyester mesh netting fabric for use in the production of prisoner laundry bags. MSI is seeking mesh netting that meets the following specifications:

- MESH NETTING FABRIC, 100% POLYESTER
- MINIMUM: 1/4" MESH OPENINGS, MAXIMUM: 3/8" MESH OPENINGS
- MESH OPENINGS MUST BE ROUND OR SQUARE
- 250/1000 DENIER YARN, TIGHT WEAVE
- FINISHED WEIGHT: 6.0 - 6.5 OZ. PER SQUARE YARD
- BURSTING STRENGTH: 152 LBS. (MINIMUM)
- FINISHED WIDTH: 48" WIDE
- MUST HAVE AT LEAST ONE SELVAGE EDGE
- COLOR: WHITE (SIMILAR TO PANTONE COLOR 11601 BRIGHT WHITE)
- APPROX. 85 - 95 LINEAR YD. PUT UP PER ROLL

#### **1.1.2 Background**

MSI manufactures goods and provides services for sale to state agencies, tax supported entities and local governmental units. The polyester mesh netting fabric is to be purchased by MSI for use in the production of prisoner laundry bags. The Michigan Department of Corrections currently has 32 prisons and houses in excess of 43,000 prisoners. Please note that there is no guarantee regarding the amount of polyester mesh netting to be purchased by MSI.

### **1.2 Scope of Work and Deliverable(s)**

#### **1.2.1 Reserved**

#### **1.2.2 Deliverable(s)**

Contractor must provide the following Deliverable(s):

1. The Contractor must supply polyester mesh netting fabric for use in the production of prisoner laundry bags. The fabric must meet the product specifications noted in Attachment A.
2. The Contractor must agree that the same product submitted for sample testing during the bid process, and which passed sample testing, must be provided to the MDOC for the duration of the Contract. No substitutions are allowed without prior written acceptance by the MDOC. The

MDOC, in its sole discretion, will determine whether a substitution will be accepted. Only substitutions that are of equivalent specifications and quality, and equal to or less in price shall be considered for approval.

3. The Contractor must inspect all rolls for any damage or flaws. The fabric must be clean and free of defects.
4. The Contractor must include a packing slip with each delivery. The packing slip must be enclosed in an envelope and attached to outer side of palletized material for easy access. The packing slip must include the purchase order number, date, deliverable, shipped quantity and name of the appropriate MSI factory. The packing slip must be written in English.
5. The Contractor must be the sole contact for this contract, assuming full responsibility for carrying out all aspects of the contract.
6. The Contractor must notify the MSI Plant Manager one (1) week prior to each delivery via telephone or e-mail.
7. The Plant Manager has the right to reject any unsatisfactory rolls or deliveries.

Definite specifications - All Deliverable(s) must conform to the specifications.

#### **1.2.3 Quantity**

The State is not obligated to purchase in any specific quantity.

#### **1.2.4 Ordering**

The State will issue a Purchase Order, which must be approved by the Contract Compliance Inspector or designee, to order any Deliverable(s). The Contractor is not authorized to begin performance until receipt of a Purchase Order.

#### **1.2.5 Alternate Bids – Deleted, Not Applicable**

### **1.3 Management and Staffing**

#### **1.3.1 Project Management**

The Contractor will carry out this project under the direction and control of the MDOC.

#### **1.3.2 Reports**

The Contractor shall provide various reports when requested by MDOC/MSI. Examples include itemized reports of total items purchased by MDOC/MSI, open invoice reports, delivery compliance reports, quality reports, etc.

#### **1.3.3 Staff, Duties, and Responsibilities**

The Contractor's required Key Personnel who will be assigned to the Contract (i.e. customer service, sales, accounts receivable, etc.) is:

<b>Employee Name</b>	<b>Job Title</b>	<b>Contact Information</b>	<b>Job Responsibilities</b>
Greg Fones	Account/Contract Manager	(269) 637-8330	Responsible for the management of this contract including, but not limited to, receiving and processing all orders, ensuring all polyester mesh ordered and delivered conforms to contract specifications, Subcontractor

			management, all client interface, notifying MSI Plant Manager of impeding shipments, problem resolution, and preparation of required reports.
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#### **1.3.4 Meetings**

The State may request a kick-off meeting with the Contractor within thirty (30) days of the Effective Date. The State may request other meetings as it deems appropriate.

#### **1.3.5 Place of Performance**

The Contractor's facility locations that will be involved in performing the Contract are:

<b>Full address of place of performance</b>	<b>Owner/operator of facility to be used</b>	<b>Percent (%) of Contract value to be performed at listed location</b>
15038 73 <sup>rd</sup> Street South Haven, MI 49090	Grand Strategy, LLC	7%
140 Spring Street Murray Hill, NJ 07974	Fablok Mills Inc.	93%

#### **1.3.6 Reserved**

#### **1.3.7 Binding Commitments**

The Contractor's representative with the authority to make binding commitments on the Contractor's behalf is Greg Fones, President of Grand Strategy, LLC.

#### **1.3.8 Training – Deleted, Not Applicable**

#### **1.3.9 Security**

- A. The Contractor will utilize a common carrier to make deliveries. The Contractor will coordinate with the carrier and the MDOC to have their drivers approved before delivering to MDOC/MSI. The State will conduct a background check, which may include, but is not limited to a LEIN check. The CCI will inform the Contractor which staff are approved to make deliveries on-site.
- B. The State may issue State ID badges to the Contractor's delivery personnel or accept the ID badge issued to delivery personnel by the Contractor. The State may decide to perform an additional background check under Section 2.4.9, Background Checks. If so, the Contractor must provide a list of all personnel, including name and date of birth, that will be assigned to State work.
- C. The State reserves the right to deny access to any institution and/or facility to any Contractor(s) staff member who fails to comply with any applicable State, federal or local law, ordinance or regulation or whose presence may compromise the security of the facility, its members, or staff.

### **1.4 Delivery and Acceptance**

#### **1.4.1 Time Frames**

All Deliverable(s) must be delivered within 45 Days after receipt of order. The receipt of order date is governed in the same manner as notices sent under Section 2.3.6, Notices. The bidder must explain in detail its various delivery programs (e.g., standard delivery and quick-ship), including any limitations such as quantity.

The Contractor must verify with its manufacturing plant and/or supplier(s) that the above time frame will be met. National holidays will not affect the Contractor's delivery within the 45 days. The Contractor's

polyester mesh netting fabric is manufactured in the United States. The manufacturing plant is shut down for plant maintenance for approximately two weeks during the Christmas holidays and for one week during the 4<sup>th</sup> of July week each year. The Contractor will notify the MSI Plant Manager of the upcoming plant outages, to ensure any upcoming orders are completed prior to the shut down or immediately after the shut down, so as not to affect the required amounts of polyester mesh netting fabric that is needed for everyday MSI production.

The Contractor will communicate with the MSI Plant Manager by making routine telephone calls to check on stock levels and anticipated upcoming purchase orders to be issued. This will be done well in advance of plant shut downs to ensure deliveries are not affected. If a an order is to be placed that would coincide with a plant shutdown, the Contractor will ensure that the manufacturing of the product is started before the receipt of the purchase order to ensure delivery within the 45 days.

#### **1.4.2 Minimum Order**

The State's requested minimum order is 5,000 yards. The Contractor is able to accept order less than 5,000 yards; however, there could be an additional charge to cover shipping costs. The Contractor will provide the pricing when the order is placed and include any additional charges. The Contractor will only add actual costs incurred with no mark-ups added. The Contractor will provide receipts to justify the additional charges.

#### **1.4.3 Packaging**

1. Product must be packaged on 2.25" cardboard tubing.
2. Each roll must be individually wrapped in a clear plastic bag to protect the product from dirt and moisture.
3. Each roll must be labeled in English with the yardage, fabric type, roll number and purchase order number.
4. Each roll must contain between 85 to 95 linear yards of fabric per roll.
5. Packing slip to be included, as specified in Section 1.2.2, item 4.
6. Packaging and containers must meet the current requirements of state and federal law applicable to rail and motor carrier freight classifications, which will permit application of the lowest freight rate.

#### **1.4.4 Palletizing**

1. Product must be palletized with 20 rolls (48" wide) per standard pallet.
2. Each pallet must be shrink wrapped in clear plastic with no cardboard covering product to ensure visual inspection for contraband.
3. Manufacturer's standard 4-way shipping pallets must be used. The bidder must explain if it cannot meet these standards.

#### **1.4.5 Delivery Term**

F.O.B. Destination  
Michigan Department of Corrections  
G. Robert Cotton Correctional Facility  
3500 N. Elm Road  
Jackson, MI 49201

- A. Deliveries must be Monday through Friday 7:30 a.m. - 9:30 a.m. and 12:00 p.m. - 2:00 p.m. Eastern Standard Time. No deliveries will be accepted on State of Michigan holidays. The State of Michigan holidays are New Year's Day, Martin Luther King, Jr. Day, President's Day, Memorial Day, Independence Day, Labor Day, Election Day (even years only), Veterans Day, Thanksgiving (and the day after), Christmas Eve, Christmas and New Year's Eve. The MDOC reserves the right to revise the delivery days and times.
- B. Items delivered must meet the Plant Manager's approval as stated within the product and packaging specifications of Section 1.1.1 and 1.4.3. Overages will not be accepted. There must be nothing loaded on or in the truck other than the items being delivered to MSI. Delivery will be made directly to the factory.
- C. At least 24 hours prior to delivery of an order, the carrier must call the factory at (517) 780-5169, and provide the information for Law Enforcement Information Network (L.E.I.N.) clearance of the delivery driver and rider(s). Minors under the age of 17 will not be allowed to enter the facility.
- D. Contractors should be aware that there is a possibility of a mobilization at any of the Correctional Facilities which prohibits delivery carriers entering the facility at time of arrival. DOC/MSI will not be responsible for any additional charges which may arise due to any delivery delays.
- E. All tobacco products are prohibited at all DOC Facilities. This includes vendors/drivers who will be prohibited from bringing in personal tobacco products to these locations.
- F. All cellular devices are prohibited from all correctional facilities.
- G. Correctional facilities will provide a lock box for cellular devices and personal tobacco products in the vehicle sallyport. Vendors that come into the Administration Building of a correctional facility will need to secure their cellular devices and personal tobacco products in their vehicle prior to entrance. If vendors arrive with such products, the vendors will be requested to return the item(s) to their vehicle. Delivery vehicles that carry tobacco and/or alcoholic products for other organizations will not be allowed to bring such products into the correctional facilities.
- H. If the Bidder's vehicle is equipped with video equipment, the Bidder must have locking capability of interior and exterior facing lenses. Video equipment cannot be used within correctional facilities.
- I. Weapons and explosives are prohibited from all State facilities.
- J. All vehicles entering a correctional facility must be inspected before entry of the secure perimeter. All delivery drivers must be LEIN cleared before entry to a correctional facility or before delivery is allowed. LEIN clearances must be completed at least 24 hours in advance of delivery.
- K. Unless specified otherwise below, delivery is governed by Section 2.8.2, Delivery Responsibilities.
- L. The bidder must quote prices "F.O.B. Destination, within Government Premises" with transportation charges prepaid on all orders that meet the minimum order requirement specified in Section 1.4.2, Minimum Order.

- M. Freight Charges - If the State orders below the minimum order requirement specified in Section 1.4.2, Minimum Order, or if a bidder quotes F.O.B. Shipping Point on one-time purchases, the bidder must specify the carrier being used.

Where the weight of the shipment is less than 150 lbs. or where shipments could be separated into smaller parcels, the bidder must use the State's current express delivery carrier, which is United Parcel Service. If the shipment weighs less than 150 lbs., but the Deliverable costs \$3000 or more, it must be sent by an appropriate carrier.

If the Contractor fails to follow these shipping instructions, the State will pay the carrier used and deduct the difference from the Contractor's invoice for the amount that was charged and the amount that would have been charged if the required carrier had been used.

#### 1.4.6 Acceptance Process

The acceptance process is defined in Section 2.8.4, Acceptance of Deliverable(s), unless otherwise defined in this section.

Goods delivered must meet the specifications of the contract.

#### 1.4.7 Criteria

The State will use the following criteria to determine acceptance of Deliverable(s):

- A. The Contractor shall provide goods according to the product specifications and delivery terms of the Contract.
  - 1. Upon delivery, some or all of the delivery may be pulled from the Contractor's delivery truck and inspected to ensure the specifications have been met in all respects. Failure to meet any specification may mean rejection of the entire order at no cost to the State.
  - 2. Upon notification of an order(s) that were shipped in error, the orders must be shipped back to the Contractor at the Contractor's expense. If such orders are not removed from the facility within 30 days of written notification, the State reserves the right to dispose of them as its own property and shall not be held liable for any cost or damages.
  - 3. Within 30 days of notification by the State of damaged orders or a shipping error, the Contractor must ship correct item(s) and issue call tag and/or make arrangements to pick up incorrect item(s) at the Contractor's expense.
- B. The Contractor guarantees all fabric provided to the MDOC/MSI. If any fabric fails to comply with the requirements of the Contract, the Contractor will immediately resolve the issue to the satisfaction of MDOC/MSI. This includes the immediate replacement of any damaged or out of specification fabric. If material must be replaced, it will be done at the Contractor's expense. Any problems found with a shipment must be reported to Greg Fones at Grand Strategy, LLC, (877) 282-2391. All returns for incorrect orders are at no cost to the State, including re-stocking fees.
- C. The Contractor agrees to replace or issue credit within thirty calendar days of the notification of return for all manufacturer defects, shipping defects and shortages at no cost to the State.

### 1.5 Proposal Pricing

#### 1.5.1 Pricing

The Contractor must specify the fixed prices for all Deliverable(s), as required by Section 2.2.1, Fixed Prices for Deliverable(s). Pricing details are noted in **Attachment A**.

#### 1.5.2 Quick Payment Terms

No quick payment discount will be offered.

#### 1.5.3 Price Term

Prices in **Attachment A** are firm with prospective renegotiation at an agreed upon time. The criteria for a re-determination of pricing are under Section 2.3.5, Price Changes.

#### 1.5.4 Tax Excluded from Price

(a) Sales Tax: The State is exempt from sales tax for direct purchases. The Contractor's prices must not include sales tax. MDOC-Procurement will furnish exemption certificates for sales tax upon request.

(b) Federal Excise Tax: The State may be exempt from Federal Excise Tax, or the taxes may be reimbursable, if articles purchased under any resulting Contract are used for the State's exclusive use. Certificates showing exclusive use for the purposes of substantiating a tax-free, or tax-reimbursable sale will be sent upon request. If a sale is tax exempt or tax reimbursable under the Internal Revenue Code, the bidder's prices must not include the Federal Excise Tax.

#### 1.5.5 Invoices

The Contractor's invoice should, at a minimum, include:

- (a) Date
- (b) PO #
- (c) Quantity
- (d) Deliverable
- (e) Unit Price
- (f) Shipping Cost (if any)
- (g) Total Price

### 1.6 Commodity Requirements

#### 1.6.1 Customer Service

The Contractor is able to receive orders by any of the following methods: electronically, phone, facsimile transmission, or by written order, to the following:

Phone: (877) 282-2391

Fax: (269) 852-5903

E-mail: [gregf@grandstrategyllc.com](mailto:gregf@grandstrategyllc.com)

Address: 15038 73<sup>rd</sup> Street, South Haven, MI 49090

The account representative/manager will be Greg Fones. The account representative/manager will ensure that all product furnished under the Contract shall be ordered by the issuance of purchase order. This individual will also be responsible for receiving orders only from the MDOC/MSI's authorized individuals specified MDOC/MSI. This individual is also responsible for ensuring timely completion of all orders. All orders will be processed immediately to ensure delivery by the dates specified on the purchase order(s). Orders that appear to be abnormal or excessive will be verified with the authorized purchases as applicable. The account representative/manager will make timely personal visits to MDOC/MSI. The Contractor will respond to State agency inquiries within 24 hours.



The hours of operation for the customer service center are 7:30 a.m. to 5:00 p.m., Monday through Friday. The customer service center will be closed on the following holidays: New Year's Day, Memorial Day, 4<sup>th</sup> of July, Thanksgiving, and Christmas Day. If an emergency should arise after hours or on a holiday, contact Greg Fones, via cell phone at (269) 921-1510, 24/7 for immediate service.

The Contractor agrees that all purchase orders are subject to the terms and conditions of the Contract. In the event of a conflict between the purchase order and the Contract, the Contract shall control.

#### **1.6.2 Research and Development – Deleted, Not Applicable**

#### **1.6.3 Quality Assurance Program**

The manufacturer, Fablok Mills, will manufacture all 100% polyester mesh netting fabric provided to the MDOC/MSI in accordance with its stringent ISO 9001-2008 Quality Assurance Program. This program will remain in effect throughout the entire Contract. For recalls or warranty issues, see Section 1.4.7 B and 1.6.4.

#### **1.6.4 Warranty for Deliverable(s)**

Any fabric that has not been used or laundered may be returned for credit if it fails to meet specifications or was ordered in error. Upon discovery of a warranty issue, MSI will contact the Contractor immediately to discuss the issue. The Contractor may immediately request that the fabric be returned at the Contractor's expense, or simply replace the unacceptable fabric. A Return Goods Authorization must be requested from the Contractor prior to any return. There may be a restocking fee for goods ordered in error.

#### **1.6.5 Special Incentives**

Any fabric ordered in error may be returned provided it is in its original condition and a Return Goods Authorization is requested from the Contractor prior to the fabric being returned. The customer may be subject to restocking fees and freight charges.

#### **1.6.6 Energy Efficiency – Deleted, Not Applicable**

#### **1.6.7 Environmental Requirements**

The State prefers to purchase products that impact the environment less than competing products. Environmental components that may be considered include: recycled content, recyclability, and the presence of undesirable materials in the products, especially persistent, bioaccumulative, and toxic chemicals. The Contractor will not provide products that will impact the environment.

#### **1.6.8 Recycled Content and Recyclability**

(a) **Deliverable(s).** Without compromising performance or quality, the State prefers Deliverable(s) containing higher percentages of recycled materials. The bidder must indicate an estimate of the percentage of recycled materials, if any, contained in each Deliverable:

10% (total estimated percentage of recovered material)

15% (estimated percentage of post-consumer material)

10% (estimated percentage of post-industrial waste)

(b) **Packaging.** The State prefers packaging materials that:

- (i) are made from recycled content that meets or exceeds all federal and state recycled content guidelines (currently 35% post-consumer for all corrugated cardboard);
- (ii) minimize or eliminate the use of polystyrene and other difficult to recycle materials;

- (iii) minimize or eliminate the use of packaging and containers or, in the alternative, minimize or eliminate the use of non-recyclable packaging and containers;
- (iv) provide for a return program where packaging can be returned to a specific location for recycling; and
- (v) contain materials that are easily recyclable in Michigan.

The cardboard cores and pallets provided in the orders are recyclable in Michigan.

#### **1.6.9 Materials Identification and Tracking**

(a) **Hazardous Chemical Identification.** The bidder must list any hazardous chemical, as defined in 40 CFR §370.2, to be delivered. Each hazardous chemical must be properly identified, including any applicable identification number, such as a National Stock Number or Special Item Number. Material Safety Data Sheets must be submitted in accordance with the federal Emergency Planning and Community Right-to-Know Act, 42 USC 11001 *et seq.*, as amended. This list must be updated whenever any other chemical to be delivered is hazardous.

Chemical (if none, enter 'None')	Identification Number
None	

(b) **Mercury Content.** Under MCL 18.1261d, the bidder must offer mercury-free products whenever possible. The bidder must explain if it intends to provide products containing mercury and whether cost competitive alternatives exist. If cost competitive alternatives do not exist, the bidder must disclose the amount or concentration of mercury and justification as to why this particular product is essential. All products containing mercury must be labeled as containing mercury.

The product does not contain mercury.

(c) **Brominated Flame Retardants.** The State prefers to purchase products that do not contain brominated flame retardants (BFRs) whenever possible. The bidder must disclose whether the products contain BFRs.

The product does not contain BFRs.

(d) **Environmental Permits and Requirements.** The bidder must disclose whether any of its facilities are in violation of any environmental laws. The bidder must immediately notify MDOC-Procurement of the receipt of any EPA, State, or local agency communication indicating that any of the bidder's facilities are in violation of applicable environmental laws.

Neither the Contractor nor the manufacturer's plant is in violation of any environmental laws.

### **1.7 State Employee Purchases**

#### **1.7.1 State Employee Purchases – Deleted, Not Applicable**

## Article 2 – Terms and Conditions

### 2.1 Contract Term

#### 2.1.1 Contract Term

The Contract is for a period of three years beginning July 22, 2014 through July 21, 2017. All outstanding Purchase Orders must also expire upon the termination (cancellation for any of the reasons listed in **Section 2.150**) of the Contract, unless otherwise extended under the Contract. Absent an early termination for any reason, Purchase Orders issued but not expired, by the end of the Contract's stated term, will remain in effect for the balance of the fiscal year for which they were issued.

#### 2.1.2 Options to Renew

This Contract may be renewed for up to two additional one year period(s). Renewal must be by mutual written agreement of the parties, not less than 30 days before expiration of the Contract.

### 2.2 Payments and Taxes

#### 2.2.1 Fixed Prices for Deliverable(s)

Prices are fixed for all Deliverable(s) and for all of the associated payment milestones and amounts.

#### 2.2.2 Payment Deadlines

Undisputed invoices will be due and payable by the State, in accordance with the State's standard payment procedure as specified in 1984 PA 279, MCL 17.51 *et seq.*, within 45 days after receipt.

#### 2.2.3 Reserved

#### 2.2.4 Reserved

#### 2.2.5 Final Payment and Waivers

The Contractor's acceptance of final payment by the State constitutes a waiver of all claims by the Contractor against the State for payment under this Contract, other than those claims previously filed in writing on a timely basis and still disputed. For other claims, final payment by the State will not constitute a waiver by either party of any rights as to the other party's continuing obligations, nor will it constitute a waiver of any claims under this Contract, including claims for Deliverable(s) not reasonably known to be defective or substandard.

#### 2.2.6 Electronic Payment Requirement

As required by MCL 18.1283a, the Contractor must electronically register with the State at <http://www.michigan.gov/cpexpress> to receive electronic fund transfer (EFT) payments.

#### 2.2.7 Employment Taxes

The Contractor must collect and pay all applicable federal, state, and local employment taxes.

#### 2.2.8 Sales and Use Taxes

The Contractor must register and remit sales and use taxes on taxable sales of tangible personal property or services delivered into the State. If the Contractor lacks sufficient presence in Michigan to be required to register and pay taxes, it must do so on a voluntary basis. The requirement to register and remit sales and use taxes extends to (a) all members of a "controlled group of corporations" as defined in § 1563(a) of the Internal Revenue Code, 26 USC 1563(a), and applicable regulations; and (b) all organizations under common control that make sales at retail for delivery into the State. Any United States Department of Treasury regulation that references "two or more trades or businesses under common control" includes organizations such as sole proprietorships, partnerships (as defined in § 7701(a)(2) of the Internal Revenue Code, 26 USC 7701(a)(2)), trusts, estates, corporations, or limited liability companies.

## 2.3 Contract Administration

### 2.3.1 Issuing Office

This Contract is issued by MDOC-Procurement. **MDOC-Procurement is the only entity authorized to modify the terms and conditions of this Contract, including the prices and specifications.** The Contract Administrator within MDOC-Procurement for this Contract is:

Lisa Lehnert, Buyer  
Procurement  
Michigan Department of Corrections  
Grandview Plaza, 5th Floor  
PO Box 30003  
Lansing, MI 48909  
[LehnertL@michigan.gov](mailto:LehnertL@michigan.gov)  
Phone: (517) 335-4904

### 2.3.2 Contract Compliance Inspector

The Contract Compliance Inspector, named below, will monitor and coordinate Contract activities on a day-to-day basis. However, monitoring of this Contract implies **no authority to modify the terms and conditions of this Contract, including the prices and specifications.**

Lanny Akers, Plant Manager  
Michigan Department of Corrections  
G. Robert Cotton Correctional Facility  
MSI Mattress Factory  
3500 N. Elm Road  
Jackson, MI 49202  
[akersl@michigan.gov](mailto:akersl@michigan.gov)  
Phone: (517) 780-5169  
Fax: (517) 780-5100

### 2.3.3 Project Manager – Deleted, Not Applicable

### 2.3.4 Contract Changes

(a) If the State requests or directs the Contractor to provide any Deliverable(s) that the Contractor believes are outside the scope of the Contractor's responsibilities under the Contract, the Contractor must notify the State before performing the requested activities. If the Contractor fails to notify the State, any activities performed will be considered in-scope and not entitled to additional compensation or time. If the Contractor begins work outside the scope of the Contract and then ceases performing that work, the Contractor must, at the request of the State, retract any out-of-scope work that would adversely affect the Contract.

(b) The State or the Contractor may propose changes to the Contract. If the Contractor or the State requests a change to the Deliverable(s) or if the State requests additional Deliverable(s), the Contractor must provide a detailed outline of all work to be done, including tasks, timeframes, listing of key personnel assigned, estimated hours for each individual per Deliverable, and a complete and detailed cost justification. If the parties agree on the proposed change, MDOC-Procurement will prepare and issue a notice that describes the change, its effects on the Deliverable(s), and any affected components of the Contract (Contract Change Notice).

(c) No proposed change may be performed until MDOC-Procurement issues a duly executed Contract Change Notice for the proposed change.

### 2.3.5 Price Changes

If allowed by Section 1.5.3, Price Term, the State and the Contractor will complete a pricing review (Review) every 365 days following the Effective Date, to allow for changes based on actual costs incurred. Requested changes may include increases or decreases in price and must be accompanied by supporting information indicating market support of proposed modifications (such as the CPI and PPI, US City Average, as published by the US Department of Labor, Bureau of Labor Statistics).

(a) The State may request a Review upon 30 days written notice that specifies what Deliverable is being reviewed. At the Review, each party may present supporting information including information created by, presented, or received from third parties.

(b) Following the presentation of supporting information, both parties will have 30 days to review the supporting information and prepare any written response.

(c) In the event the Review reveals no need for modifications of any type, pricing will remain unchanged unless mutually agreed to by the parties. However, if the Review reveals that changes may be recommended, both parties will negotiate in good faith for 30 days unless extended by mutual agreement of the parties.

(d) If the supporting information reveals a reduction in prices is necessary and Contractor agrees to reduce rates accordingly, then the State may elect to exercise the next one year option, if available.

(e) If the supporting information reveals a reduction in prices is necessary and the parties are unable to reach agreement, then the State may eliminate all remaining Contract renewal options.

(f) Any changes based on the Review must be implemented through the issuance of a Contract Change Notice.

### 2.3.6 Notices

All notices and other communications required or permitted under this Contract must be in writing and will be considered given when delivered personally, by fax (if provided) or by e-mail (if provided), or by registered mail, return receipt requested, addressed as follows (or any other address that is specified in writing by either party):

If to State:

State of Michigan  
MDOC-Procurement  
Attention: Lisa Lehnert, Buyer  
PO Box 30003  
206 E. Michigan Ave.  
Lansing, MI 48909  
[LehnertL@michigan.gov](mailto:LehnertL@michigan.gov)  
Fax: (517) 335-0871

If to Contractor:

Grand Strategy, LLC  
15038 73<sup>rd</sup> Street  
South Haven, MI 49090  
[gregf@grandstrategyllc.com](mailto:gregf@grandstrategyllc.com)  
Fax: (269) 852-5903

Delivery by a nationally recognized overnight express courier will be treated as personal delivery.

### 2.3.7 Covenant of Good Faith

Each party must act reasonably and in good faith. Unless otherwise provided in this Contract, the parties will not unreasonably delay, condition or withhold their consent, decision, or approval any time it is requested or reasonably required in order for the other party to perform its responsibilities under the Contract.

#### 2.3.8 Assignments

(a) Neither party may assign this Contract, or assign or delegate any of its duties or obligations under the Contract, to another party (whether by operation of law or otherwise), without the prior approval of the other party. The State may, however, assign this Contract to any other State agency, department, or division without the prior approval of the Contractor.

(b) If the Contractor intends to assign this Contract or any of the Contractor's rights or duties under the Contract, the Contractor must notify the State and provide adequate information about the assignee at least 90 days before the proposed assignment or as otherwise provided by law or court order. The State may withhold approval from proposed assignments, subcontracts, or novations if the State determines, in its sole discretion, that the transfer of responsibility would decrease the State's likelihood of receiving performance on the Contract or the State's ability to recover damages.

(c) If the State permits an assignment of the Contractor's right to receive payments, the Contractor is not relieved of its responsibility to perform any of its contractual duties. All payments must continue to be made to one entity.

#### 2.3.9 Equipment

The State will not provide equipment and resources unless specifically identified in the Statement(s) of Work or other Contract exhibits.

#### 2.3.10 Reserved

### 2.4 Contract Management

#### 2.4.1 Contractor Personnel Qualifications

All persons assigned by the Contractor to perform work must be employees of the Contractor or its majority-owned subsidiaries, or a State-approved Subcontractor, and must be fully qualified to perform the work assigned to them. The Contractor must include this requirement in any subcontract.

#### 2.4.2 Contractor Key Personnel

(a) The Contractor must provide the Contract Compliance Inspector with the names of Key Personnel.

(b) The Contractor must dedicate Key Personnel to perform work for the duration of the Contract as provided in Section 1.3.3, Staff, Duties, and Responsibilities.

(c) Before assigning a new individual to any Key Personnel position, the Contractor must notify the State of the proposed assignment, introduce the individual to the appropriate State representatives, and provide the State with a resume and any other reasonably requested information. The State must approve or disapprove the assignment, reassignment, or replacement of any Key Personnel. The State may interview the individual before making its decision. If the State disapproves an individual, the State will provide a written explanation outlining the reasons for the rejection.

(d) The Contractor may not remove any Key Personnel from their assigned roles without the prior consent of the State. The Contractor's removal of Key Personnel without the prior consent of the State constitutes Unauthorized Removal. Unauthorized Removal does not include replacing Key Personnel for reasons beyond the Contractor's reasonable control, including illness, disability, death, leave of absence, personal emergency circumstances, resignation, or termination for cause. Unauthorized Removal does not include replacing Key Personnel because of promotions or other job movements allowed by the Contractor's personnel policies or Collective Bargaining Agreement(s), as long as the Contractor assigns the proposed replacement to train the outgoing Key Personnel for 30 days. Any Unauthorized Removal will be considered a material breach of the Contract.

(e) The Contractor must notify the Contract Compliance Inspector and the Contract Administrator at least 10 Days before redeploying non-Key Personnel to other projects.

#### **2.4.3 Removal or Reassignment of Personnel at the State's Request**

The State may require the Contractor to remove or reassign personnel if the State has legitimate, good-faith reasons articulated in a notice to the Contractor. Replacement personnel must be fully qualified for the position. If the State exercises this right, and the Contractor cannot immediately replace the removed personnel, the State agrees to an equitable adjustment in schedule or other terms that may be affected.

#### **2.4.4 Contractor Personnel Location**

Subject to availability, the State may allow selected Contractor personnel to use State office space.

#### **2.4.5 Contractor Identification**

The Contractor's employees must be clearly identifiable while on State property by wearing a State-issued badge, and must clearly identify themselves and the company they work for whenever making contact with State personnel by telephone or other means.

#### **2.4.6 Cooperation with Third Parties**

The Contractor and its Subcontractors must cooperate with the State and its agents and other contractors, including the State's quality assurance personnel. The Contractor must provide reasonable access to its personnel, systems, and facilities related to the Contract to the extent that access will not interfere with or jeopardize the safety or operation of the systems or facilities.

#### **2.4.7 Relationship of the Parties**

The relationship between the State and Contractor is that of client and independent contractor. No agent, employee, or servant of the Contractor, or any of its subcontractors, is an employee, agent or servant of the State. The Contractor will be solely and entirely responsible for its acts and the acts of its agents, employees, servants, and subcontractors during the performance of the Contract.

#### **2.4.8 Contractor Return of State Equipment/Resources**

The Contractor must return to the State any State-furnished equipment, facilities and other resources when no longer required for the Contract in the same condition as when provided by the State, reasonable wear and tear excepted.

#### **2.4.9 Background Checks**

The State may investigate the Contractor's personnel before granting access to State facilities and systems. The scope of the background check is at the discretion of the State and the results will be used to determine eligibility for working within State facilities and systems. The investigations will include a Michigan State Police background check (ICHAT) and may include a Criminal Justice Information Services (CJIS) fingerprint check. Proposed Contractor personnel may be required to complete and submit an RI-8 Fingerprint Card for the CJIS fingerprint check.

#### **2.4.10 Compliance With State Policies**

All Contractor personnel must comply with the State's security and acceptable use policies for State IT equipment and resources, available at [http://www.michigan.gov/cybersecurity/0,1607,7-217-34395\\_34476---,00.html](http://www.michigan.gov/cybersecurity/0,1607,7-217-34395_34476---,00.html). Contractor personnel must agree to the State's security and acceptable use policies before the State grants access to its IT equipment and resources. The Contractor must provide these policies to prospective personnel before requesting access from the State. Contractor personnel must comply with all physical security procedures in State facilities.

### **2.5 Subcontracting by Contractor**

#### **2.5.1 Contractor Responsible**

The Contractor is responsible for the completion of all Deliverable(s). The State will consider the Contractor to be the sole point of contact with regard to all contractual matters, including payment of any charges for Deliverable(s). The Contractor must make all payments to its Subcontractors or suppliers.

Except as otherwise agreed in writing, the State is not obligated to make payments for the Deliverable(s) to any party other than the Contractor.

#### **2.5.2 State Approval of Subcontractor**

(a) The Contractor may not delegate any duties under this Contract to a Subcontractor unless MDOC-Procurement gives prior approval to the delegation. Attached as **Exhibit A** is a list of the Subcontractors, if any, approved by the State as of the Effective Date. The State is entitled to receive copies of and review all subcontracts. The Contractor may delete or redact any proprietary information before providing it to the State.

(b) The State may require the Contractor to terminate and replace any Subcontractor the State reasonably finds unacceptable. The required replacement of a Subcontractor must be written and contain reasonable detail outlining the State's reasons. If the State exercises this right, and the Contractor cannot immediately replace the Subcontractor, the State will agree to an equitable adjustment in the schedule or other terms that may be affected by the State's required replacement. If this requirement results in a delay, the delay will not be counted against any applicable Service Level Agreement (SLA).

#### **2.5.3 Subcontract Requirements**

Except where specifically approved by the State, Contractor must include the obligations in Sections 2.24.2, Media Releases, 2.4, Contract Management, 2.11, Confidentiality, 2.12, Records and Inspections, 2.13, Warranties, 2.14, Insurance, and 2.23, Laws, in all of its agreements with Subcontractors.

#### **2.5.4 Competitive Selection**

Contractor must select Subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of this Contract.

### **2.6 Administrative Fee and Reporting**

#### **2.6.1 Administrative Fee and Reporting – Deleted, Not Applicable**

### **2.7 Performance**

#### **2.7.1 Time of Performance**

(a) The Contractor must immediately notify the State upon becoming aware of any circumstances that may reasonably be expected to jeopardize the completion of any Deliverable(s) by the scheduled due dates in the latest State-approved delivery schedule and must inform the State of the projected actual delivery date.

(b) If the Contractor believes that a delay in performance by the State has caused or will cause the Contractor to be unable to perform its obligations according to specified Contract time periods, the Contractor must immediately notify the State and, to the extent practicable, continue to perform its obligations according to the Contract time periods. The Contractor will not be in default for a delay in performance to the extent the delay is caused by the State.

#### **2.7.2 Reserved**

#### **2.7.3 Liquidated Damages – Deleted, Not Applicable**

#### **2.7.4 Excusable Failure**

Neither party will be liable for any default, damage or delay in the performance of its obligations that is caused by government regulations or requirements, power failure, electrical surges or current fluctuations, war, forces of nature or acts of God, delays or failures of transportation, equipment shortages, suppliers' failures, acts or omissions of common carriers, fire, riots, civil disorders, labor disputes, embargoes, injunctions (provided the injunction was not issued as a result of any fault or negligence of the party seeking to have its default or delay excused), or any other cause beyond the reasonable control of a party;



provided the non-performing party and any Subcontractors are without fault in causing the default or delay, and the default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans, or other means, including disaster recovery plans.

If a party does not perform its contractual obligations for any of the reasons listed, the non-performing party will be excused from any further performance of its affected obligation(s) for as long as the circumstances prevail. The non-performing party must promptly notify the other party immediately after the excusable failure occurs, and when it abates or ends. Both parties must use commercially reasonable efforts to resume performance.

If any of the reasons listed substantially prevent, hinder, or delay the Contractor's performance of the Deliverable(s) for more than 10 Days, and the State reasonably determines that performance is not likely to be resumed within a period of time that is satisfactory to the State, the State may: (a) procure the affected Deliverable(s) from an alternate source without liability for payment so long as the delay in performance continues; or (b) terminate any portion of the Contract so affected and equitably adjust charges payable to the Contractor to reflect those Deliverable(s) that are terminated. The State must pay for all Deliverable(s) for which Final Acceptance has been granted before the termination date.

The Contractor will not have the right to any additional payments from the State as a result of any Excusable Failure or to payments for Deliverable(s) not provided as a result of the Excusable Failure. The Contractor will not be relieved of a default or delay caused by acts or omissions of its Subcontractors except to the extent that a Subcontractor experiences an Excusable Failure and the Contractor cannot reasonably circumvent the effect of the Subcontractor's default or delay in performance through the use of alternate sources, workaround plans, or other means, including disaster recovery plans.

## **2.8 Acceptance of Deliverable(s)**

### **2.8.1 Quality Assurance**

By tendering any Deliverable to the State, the Contractor certifies to the State that (a) it has performed reasonable quality assurance activities; (b) it has performed any reasonable testing; and (c) it has corrected all material deficiencies discovered during the quality assurance activities and testing. To the extent that testing occurs at State Locations, the State is entitled to observe and otherwise participate in the testing.

### **2.8.2 Delivery Responsibilities**

Unless otherwise specified by the State in Section 1.4.5, Delivery Term, the following are applicable to all deliveries:

(a) The Contractor is responsible for delivering the Deliverable(s) by the applicable delivery date to the location(s) specified in the SOW or individual Purchase Order.

(b) The Contractor must ship the Deliverable(s) "F.O.B. Destination, within Government Premises."

(c) The State will examine all packages at the time of delivery. The quantity of packages delivered must be recorded and any obvious visible or suspected damage must be noted at the time of delivery using the shipper's delivery document(s) and appropriate procedures to record the damage.

### **2.8.3 Process for Acceptance of Deliverable(s)**

The State's review period for acceptance of the Deliverable(s) is governed by the applicable Statement of Work, and if the Statement of Work does not specify the State's review period, it is by default 30 Days for a Deliverable (State Review Period). The State will notify the Contractor by the end of the State Review Period that either:

(a) the Deliverable is accepted in the form delivered by the Contractor;

(b) the Deliverable is accepted, but noted deficiencies must be corrected; or

(c) the Deliverable is rejected along with notation of any deficiencies that must be corrected before acceptance of the Deliverable.

If the State delivers to the Contractor a notice of deficiencies, the Contractor will correct the described deficiencies and within 30 Days resubmit the Deliverable(s) with an explanation that demonstrates all corrections have been made to the original Deliverable(s). The Contractor's correction efforts will be made at no additional charge. Upon receipt of a corrected Deliverable from the Contractor, the State will have a reasonable additional period of time, not to exceed 30 Days, to accept the corrected Deliverable.

#### 2.8.4 Acceptance of Deliverable(s)

(a) The State's obligation to comply with any State Review Period is conditioned on the timely delivery of the Deliverable(s). The State Review Period will begin on the first Business Day following the State's receipt of the Deliverable(s).

(b) The State may inspect the Deliverable to confirm that all components have been delivered without material deficiencies. If the State determines that the Deliverable or one of its components has material deficiencies, the State may reject the Deliverable without performing any further inspection or testing.

(c) The State will only approve a Deliverable after confirming that it conforms to and performs according to its specifications without material deficiency. The State may, in its discretion, conditionally approve a Deliverable that contains material deficiencies if the State elects to permit the Contractor to correct those deficiencies post-approval. The Contractor remains responsible for working diligently to correct, within a reasonable time at the Contractor's expense, all deficiencies in the Deliverable that remain outstanding at the time of State approval.

(d) If, after three opportunities the Contractor is unable to correct all deficiencies, the State may: (i) demand that the Contractor cure the failure and give the Contractor additional time to do so at the sole expense of the Contractor; (ii) keep the Contract in force and perform, either itself or through other parties, whatever the Contractor has failed to do, and recover the difference between the cost to cure the deficiency and the Contract price plus an additional amount equal to 10% of the State's cost to cure the deficiency; or (iii) fully or partially terminate the Contract for default by giving notice to the Contractor. Notwithstanding the foregoing, the State cannot use, as a basis for exercising its termination rights under this Section, deficiencies discovered in a repeat State Review Period that could reasonably have been discovered during a prior State Review Period.

(e) The State, at any time and in its reasonable discretion, may reject the Deliverable without notation of all deficiencies if the acceptance process reveals deficiencies in a sufficient quantity or of a sufficient severity that renders continuing the process unproductive or unworkable.

#### 2.8.5 Reserved

#### 2.8.6 Reserved

#### 2.8.7 Final Acceptance

Unless otherwise stated in the Statement of Work, "Final Acceptance" of a Deliverable occurs when that Deliverable has been accepted by the State following the applicable State Review Period.

#### 2.9 Reserved

#### 2.10 State Standards

##### 2.10.1 Electronic Receipt Processing Standard

All electronic commerce applications that allow for electronic receipt of credit/debit card and electronic check (ACH) transactions must be processed via the Centralized Electronic Payment Authorization System (CEPAS).

## **2.11 Confidentiality**

### **2.11.1 Confidential Information**

As used in this Section, "Confidential Information" means all information of the parties, except information that is:

- (a) disclosable under the Michigan Freedom Of Information Act (FOIA);
- (b) now available or becomes available to the public without breach of this Contract;
- (c) released in writing by the disclosing party;
- (d) obtained from a third party or parties having no obligation of confidentiality with respect to such information;
- (e) publicly disclosed pursuant to federal or state law; or
- (f) independently developed by the receiving party without reference to Confidential Information of the furnishing party.

### **2.11.2 Protection and Destruction of Confidential Information**

(a) Each party must use the same care to prevent unauthorized disclosure of Confidential Information as it uses to prevent disclosure of its own information of a similar nature, but in no event less than a reasonable degree of care. Neither the Contractor nor the State will: (i) make any use of the Confidential Information of the other except as contemplated by this Contract; (ii) acquire any interest or license in or assert any lien against the Confidential Information of the other; or (iii) if requested to do so, refuse for any reason to promptly return the other party's Confidential Information.

(b) Each party will limit disclosure of the other party's Confidential Information to employees, agents, and Subcontractors who must have access to fulfill the purposes of this Contract. Disclosure to, and use by, a Subcontractor is permissible where: (i) use of a Subcontractor is authorized under this Contract; (ii) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the Subcontractor's scope of responsibility; and (iii) Contractor obligates the Subcontractor in a written contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor and of any Subcontractor having access to the State's Confidential Information may be required to execute a separate agreement to be bound by the confidentiality requirements of this Section.

(c) Upon termination of the Contract, Contractor must promptly return the State's Confidential Information or certify to the State that Contractor has destroyed all of the State's Confidential Information.

### **2.11.3 Exclusions**

The provisions of Section 2.11, Confidentiality, will not apply where the receiving party is required by law to disclose the other party's Confidential Information, provided that the receiving party: (i) promptly provides the furnishing party with notice of the legal request; and (ii) assists the furnishing party in resisting or limiting the scope of the disclosure as reasonably requested by the furnishing party.

### **2.11.4 No Obligation to Disclose**

Nothing contained in Section 2.11, Confidentiality, will be construed as obligating a party to disclose any particular Confidential Information to the other party.

### **2.11.5 Security Breach Notification**

If the Contractor breaches this Section, the Contractor must (i) promptly cure any deficiencies and (ii) comply with any applicable federal and state laws and regulations pertaining to unauthorized disclosures. Contractor and the State will cooperate to mitigate the effects of any breach, intrusion, or unauthorized use or disclosure. Contractor must report to the State, in writing, any use or disclosure of Confidential Information, whether suspected or actual, other than as provided for by the Contract within 72 hours after becoming aware of the use or disclosure or the shorter time period as is reasonable under the circumstances.

#### **2.11.6 PCI Data Security Standard**

(a) Contractors that process, transmit or store credit/debit cardholder data, must adhere to the Payment Card Industry (PCI) Data Security Standards. The Contractor is responsible for the security of cardholder data in its possession. The data may only be used to assist the State or for other uses specifically authorized by law.

(b) The Contractor must notify the CCI (within 72 hours of discovery) of any breaches in security where cardholder data has been compromised. In that event, the Contractor must provide full cooperation to the Visa, MasterCard, Discover and state Acquirer representative(s), and/or a PCI approved third party to conduct a thorough security review. The Contractor must make the forensic report available within two weeks of completion. The review must validate compliance with the current PCI Data Security Standards for protecting cardholder data.

(c) The Contractor must properly dispose of cardholder data, in compliance with DTMB policy, when it is no longer needed. The Contractor must continue to treat cardholder data as confidential upon contract termination.

(d) The Contractor must provide the CCI with an annual Attestation of Compliance (AOC) or a Report on Compliance (ROC) showing the contractor is in compliance with the PCI Data Security Standards. The Contractor must notify the CCI of all failures to comply with the PCI Data Security Standard.

### **2.12 Records and Inspections**

#### **2.12.1 Inspection of Work Performed**

The State's authorized representatives, at reasonable times and with 10 days prior notice, have the right to enter the Contractor's premises or any other places where work is being performed in relation to this Contract. The representatives may inspect, monitor, or evaluate the work being performed, to the extent the access will not reasonably interfere with or jeopardize the safety or operation of Contractor's systems or facilities. The Contractor must provide reasonable assistance for the State's representatives during inspections.

#### **2.12.2 Retention of Records**

(a) The Contractor must retain all financial and accounting records related to this Contract for a period of seven years after the Contractor performs any work under this Contract (Audit Period).

(b) If an audit, litigation, or other action involving the Contractor's records is initiated before the end of the Audit Period, the Contractor must retain the records until all issues arising out of the audit, litigation, or other action are resolved or until the end of the Audit Period, whichever is later.

#### **2.12.3 Examination of Records**

The State, upon 10 days notice to the Contractor, may examine and copy any of the Contractor's records that relate to this Contract. The State does not have the right to review any information deemed confidential by the Contractor if access would require the information to become publicly available. This requirement also applies to the records of any parent, affiliate, or subsidiary organization of the Contractor, or any Subcontractor that performs services in connection with this Contract.

#### **2.12.4 Audit Resolution**

If necessary, the Contractor and the State will meet to review any audit report promptly after its issuance. The Contractor must respond to each report in writing within 30 days after receiving the report, unless the report specifies a shorter response time. The Contractor and the State must develop, agree upon, and monitor an action plan to promptly address and resolve any deficiencies, concerns, or recommendations in the report.

#### **2.12.5 Errors**

(a) If an audit reveals any financial errors in the records provided to the State, the amount in error must be reflected as a credit or debit on the next invoice and subsequent invoices until the amount is paid or refunded in full. However, a credit or debit may not be carried forward for more than four invoices or beyond the termination of the Contract. If a balance remains after four invoices, the remaining amount will be due as a payment or refund within 45 days of the last invoice on which the balance appeared or upon termination of the Contract, whichever is earlier.

(b) In addition to other available remedies, if the difference between the State's actual payment and the correct invoice amount, as determined by an audit, is greater than 10%, the Contractor must pay all reasonable audit costs.

#### **2.13 Warranties**

##### **2.13.1 Warranties and Representations**

The Contractor represents and warrants:

(a) It is capable of fulfilling and will fulfill all of its obligations under this Contract. The performance of all obligations under this Contract must be provided in a timely, professional, and workmanlike manner and must meet the performance and operational standards required under this Contract.

(b) The Contract appendices, attachments, and exhibits identify the equipment, software, and services necessary for the Deliverable(s) to comply with the Contract's requirements.

(c) It is the lawful owner or licensee of any Deliverable licensed or sold to the State by Contractor or developed by the Contractor for this Contract, and Contractor has all of the rights necessary to convey to the State the ownership rights or licensed use, as applicable, of any Deliverable(s). None of the Deliverable(s) provided by Contractor to the State, nor their use by the State, will infringe the patent, trademark, copyright, trade secret, or other proprietary rights of any third party.

(d) If the Contractor procures any equipment, software, or other Deliverable(s) for the State (including equipment, software, and other Deliverable(s) manufactured, re-marketed or otherwise sold by the Contractor or under the Contractor's name), then the Contractor must assign or otherwise transfer to the State or its designees, or afford the State the benefits of, any manufacturer's warranty for the Deliverable(s).

(e) The Contract signatory has the authority to enter into this Contract on behalf of the Contractor.

(f) It is qualified and registered to transact business in all locations where required.

(g) Neither the Contractor nor any affiliates, nor any employee of either, has, will have, or will acquire, any interest that would conflict in any manner with the Contractor's performance of its duties and responsibilities to the State or otherwise create an appearance of impropriety with respect to the award or performance of this Contract. The Contractor must notify the State about the nature of any conflict or appearance of impropriety within two days of learning about it.

(h) Neither the Contractor nor any affiliates, nor any employee of either, has accepted or will accept anything of value based on an understanding that the actions of the Contractor, its affiliates, or its employees on behalf of the State would be influenced. The Contractor must not attempt to influence any State employee by the direct or indirect offer of anything of value.

(i) Neither the Contractor nor any affiliates, nor any employee of either, has paid or agreed to pay any person, other than bona fide employees and consultants working solely for the Contractor or the affiliate, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract.

(j) The Contractor arrived at its proposed prices independently, without communication or agreement with any other bidder for the purpose of restricting competition. The Contractor did not knowingly disclose its quoted prices for this Contract to any other bidder before the award of the Contract. The Contractor made no attempt to induce any other person or entity to submit or not submit a proposal for the purpose of restricting competition.

(k) All financial statements, reports, and other information furnished by the Contractor to the State in connection with the award of this Contract fairly and accurately represent the Contractor's business, properties, financial condition, and results of operations as of the respective dates covered by the financial statements, reports, or other information. There has been no material adverse change in the Contractor's business, properties, financial condition, or results of operation.

(l) All written information furnished to the State by or for the Contractor in connection with the award of this Contract is true, accurate, and complete, and contains no false statement of material fact nor omits any material fact that would make the submitted information misleading.

(m) It will immediately notify MDOC-Procurement if any of the certifications, representations, or disclosures made in the Contractor's original bid response change after the Contract is awarded.

#### **2.13.2 Warranty of Merchantability**

The Deliverable(s) provided by the Contractor must be merchantable.

#### **2.13.3 Warranty of Fitness for a Particular Purpose**

The Deliverable(s) provided by the Contractor must be fit for the purpose(s) identified in this Contract.

#### **2.13.4 Warranty of Title**

The Contractor must convey good title to any Deliverable(s) provided to the State. All Deliverable(s) provided by the Contractor must be delivered free from any security interest, lien, or encumbrance of which the State, at the time of contracting, has no knowledge. Deliverable(s) provided by the Contractor must be delivered free of any rightful claim of infringement by any third person.

#### **2.13.5 Equipment Warranty – Deleted, Not Applicable**

#### **2.13.6 New Deliverable(s)**

The Contractor must provide new Deliverable(s) where the Contractor knows or has the ability to select between new or like-new. Unless specified in Article 1, Statement of Work, equipment that is assembled from new or serviceable used parts that are like new in performance is acceptable only where the Contractor does not have knowledge or the ability to select one or the other.

#### **2.13.7 Prohibited Products**

Shipping of salvage, distressed, outdated, or discontinued goods to any State agency will be considered a material default by the Contractor. The brand and product number offered for all items will remain consistent for the term of the Contract, unless MDOC-Procurement has approved a change order under Section 2.3.4, Contract Changes.

#### **2.13.8 Consequences For Breach**

In addition to any remedies available in law, if the Contractor breaches any of the warranties contained in Section 2.13, Warranties, the breach may be considered a material default.

### **2.14 Insurance**

#### **2.14.1 Liability Insurance**

For the purpose of this Section, "State" includes its departments, divisions, agencies, offices, commissions, officers, employees, and agents.

(a) The Contractor must provide proof that it has obtained the minimum levels of insurance coverage indicated or required by law, whichever is greater. The insurance must protect the State from claims that may arise out of, or result from, or are alleged to arise out of, or result from, the Contractor's or a Subcontractor's performance, including any person directly or indirectly employed by the Contractor or a Subcontractor, or any person for whose acts the Contractor or a Subcontractor may be liable.

(b) The Contractor waives all rights against the State for the recovery of damages that are covered by the insurance policies the Contractor is required to maintain under this Section. The Contractor's failure to obtain and maintain the required insurance will not limit this waiver.

(c) All insurance coverage provided relative to this Contract is primary and non-contributing to any comparable liability insurance (including self-insurance) carried by the State.

(d) The State, in its sole discretion, may approve the use of a fully-funded self-insurance program in place of any specified insurance identified in this Section.

(e) Unless the State approves otherwise, any insurer must have an A.M. Best rating of "A" or better and a financial size of VII or better, or if those ratings are not available, a comparable rating from an insurance rating agency approved by the State. All policies of insurance must be issued by companies that have been approved to do business in the State.

(f) Where specific coverage limits are listed in this Section, they represent the minimum acceptable limits. If the Contractor's policy contains higher limits, the State is entitled to coverage to the extent of the higher limits.

(g) The Contractor must maintain all required insurance coverage throughout the term of this Contract and any extensions. However, in the case of claims-made Commercial General Liability policies, the Contractor must secure tail coverage for at least three (3) years following the termination of this Contract.

(h) The Contractor must provide, within five (5) business days, written notice to the Director of MDOC-Procurement if any policy required under this section is cancelled. The notice must include the applicable Contract or Purchase Order number.

(i) The minimum limits of coverage specified are not intended, and may not be construed, to limit any liability or indemnity of the Contractor to any indemnified party or other persons.

(j) The Contractor is responsible for the payment of all deductibles.

(k) If the Contractor fails to pay any premium for a required insurance policy, or if any insurer cancels or significantly reduces any required insurance without the State's approval, the State may, after giving the Contractor at least 30 days' notice, pay the premium or procure similar insurance coverage from another company or companies. The State may deduct any part of the cost from any payment due the Contractor, or require the Contractor to pay that cost upon demand.

(l) In the event the State approves the representation of the State by the insurer's attorney, the attorney may be required to be designated as a Special Assistant Attorney General by the Michigan Attorney General.

(m) The Contractor is required to pay for and provide the type and amount of insurance checked ☒ below:

☒ **(i) Commercial General Liability**

Minimal Limits:

\$2,000,000 General Aggregate Limit other than Products/Completed Operations;  
\$2,000,000 Products/Completed Operations Aggregate Limit;  
\$1,000,000 Personal & Advertising Injury Limit; and  
\$1,000,000 Each Occurrence Limit.

Deductible maximum:

\$50,000 Each Occurrence

Additional Requirements:

The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents as additional insureds on the Commercial General Liability certificate. The Contractor also agrees to provide evidence that the insurance policy contains a waiver of subrogation by the insurance company.

The Products/Completed Operations sublimit requirement may be satisfied by evidence of the manufacturer's Commercial General Liability Insurance. The manufacturer must list the State of

Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents as additional insureds on the Commercial General Liability certificate and must provide evidence that the policy contains a waiver of subrogation by the insurance company. ,

☐ **(ii) Umbrella or Excess Liability**

Minimal Limits:

\$10,000,000 General Aggregate

Additional Requirements:

Umbrella or Excess Liability limits must at least apply to the insurance required in (i), Commercial General Liability. The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents as additional insureds on the certificate. The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

☒ **(iii) Motor Vehicle**

Minimal Limits:

If a motor vehicle is used in relation to the Contractor's performance, the Contractor must have vehicle liability insurance on the motor vehicle for bodily injury and property damage as required by law.

☒ **(iv) Workers' Compensation**

Minimal Limits:

The Contractor must provide Workers' Compensation coverage according to applicable laws governing work activities in the state of the Contractor's domicile. If the applicable coverage is provided by a self-insurer, the Contractor must provide proof of an approved self-insured authority by the jurisdiction of domicile.

For employees working outside of the state of the Contractor's domicile, the Contractor must provide certificates of insurance proving mandated coverage levels for the jurisdictions where the employees' activities occur.

Additional Requirements:

The Contractor must provide the applicable certificates of insurance and a list of states where the coverage is applicable. Contractor must provide proof that the Workers' Compensation insurance policies contain a waiver of subrogation by the insurance company, except where such a provision is prohibited or limited by the laws of the jurisdiction in which the work is to be performed.

☒ **(v) Employers Liability**

Minimal Limits:

\$100,000 Each Accident;  
\$100,000 Each Employee by Disease  
\$500,000 Aggregate Disease

Additional Requirements:

The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents as additional insureds on the certificate.

**2.14.2 Subcontractor Insurance Coverage**

Except where the State has approved a subcontract with other insurance provisions, the Contractor must require any Subcontractor to purchase and maintain the insurance coverage required in Section 2.14.1, Liability Insurance. Alternatively, the Contractor may include a Subcontractor under the Contractor's



insurance on the coverage required in that Section. The failure of a Subcontractor to comply with insurance requirements does not limit the Contractor's liability or responsibility.

#### **2.14.3 Certificates of Insurance**

Before the Contract is signed, and not less than 20 days before the insurance expiration date every year thereafter, the Contractor must provide evidence that the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents are listed as additional insureds as required. The Contractor must provide MDOC-Procurement with all applicable certificates of insurance verifying insurance coverage or providing, if approved, satisfactory evidence of self-insurance as required in Section 2.14.1, Liability Insurance. Each certificate must be on the standard "Accord" form or equivalent and MUST IDENTIFY THE APPLICABLE CONTRACT OR PURCHASE ORDER NUMBER.

### **2.15 Indemnification**

#### **2.15.1 General Indemnification**

The Contractor must indemnify, defend, and hold the State harmless from liability, including all claims and losses, and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties), accruing or resulting to any person, firm, or corporation that may be injured or damaged by the Contractor in the performance of this Contract and that are attributable to the negligence or tortious acts of the Contractor, any of its subcontractors, or by anyone else for whose acts any of them may be liable.

#### **2.15.2 Reserved**

#### **2.15.3 Employee Indemnification**

In any claims against the State, its departments, agencies, commissions, officers, employees, and agents, by any employee of the Contractor or any of its subcontractors, the indemnification obligation will not be limited in any way by the amount or type of damages, compensation, or benefits payable by or for the Contractor or any of its subcontractors under worker's disability compensation acts, disability benefit acts, or other employee benefit acts. This indemnification clause is intended to be comprehensive. Any overlap in provisions, or the fact that greater specificity is provided as to some categories of risk, is not intended to limit the scope of indemnification under any other provisions.

#### **2.15.4 Patent/Copyright Infringement Indemnification**

(a) The Contractor must indemnify and hold the State harmless from liability, including all claims and losses, and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest, and penalties) resulting from any action threatened or brought against the State to the extent that the action is based on a claim that any piece of equipment, software, commodity, or service supplied by the Contractor or its subcontractors, or its operation, use, or reproduction, infringes any United States patent, copyright, trademark or trade secret of any person or entity.

(b) If, in the State's or the Contractor's opinion, any piece of equipment, software, commodity or service supplied by the Contractor or its subcontractors, or its operation, use, or reproduction, is likely to become the subject of an infringement claim, the Contractor must, at its expense: (i) procure for the State the right to continue using the equipment, software, commodity or service or, if this option is not reasonably available to the Contractor; (ii) replace or modify to the State's satisfaction the same with equipment, software, commodity or service of equivalent function and performance so that it becomes non-infringing, or, if this option is not reasonably available to Contractor; (iii) accept its return by the State with appropriate credits to the State against the Contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.

(c) Notwithstanding the foregoing, the Contractor has no obligation to indemnify or defend the State for, or to pay any costs, damages or attorneys' fees related to, any infringement claim based upon:

(i) equipment, software, commodity or service developed based on written specifications of the State; (ii) use of the equipment, software, or commodity in a configuration other than implemented or approved by the Contractor, including any modification of the same by the State; or (iii) the combination, operation, or use of the equipment, software, or commodity with equipment, software, or commodities not supplied by the Contractor under this Contract.

#### **2.15.5 Continuing Obligation**

The Contractor's duty to indemnify under Section 2.15, Indemnification, continues in full force and effect, notwithstanding the expiration or early cancellation of the Contract, with respect to any claims based on facts or conditions that occurred before expiration or cancellation.

#### **2.15.6 Indemnification Procedures**

These procedures apply to all indemnity obligations:

(a) After the State receives notice of an action or proceeding involving a claim for which it will seek indemnification, the State must promptly notify the Contractor of the claim and take, or assist the Contractor in taking, any reasonable action to avoid a default judgment against the Contractor. Failure to notify the Contractor does not relieve the Contractor of its indemnification obligations except to the extent that the Contractor can prove damages attributable to the notification failure. Within 10 days following receipt of notice from the State relating to any claim, the Contractor must notify the State whether the Contractor agrees to assume control of the defense and settlement of that claim (a "Notice of Election"). After notifying the Contractor of a claim and before the State receives the Contractor's Notice of Election, the State is entitled to defend against the claim, at the Contractor's expense, and the Contractor will be responsible for any reasonable costs, including attorney fees, incurred by the State in defending against the claim during that period.

(b) If the Contractor delivers a Notice of Election relating to any claim: (i) the State is entitled to participate in the defense of the claim and to employ counsel at its own expense to assist in handling the claim and to monitor and advise the State about the status and progress of the defense; (ii) the Contractor must, at the request of the State, demonstrate the Contractor's financial ability to carry out its defense and indemnity obligations under this Contract; (iii) the Contractor must periodically advise the State about the status and progress of the defense and must obtain prior approval of the State before entering into any settlement of the claim or ceasing to defend against the claim; and (iv) to the extent that any principles of Michigan governmental or public law may be involved or challenged, the State has the right, at its own expense, to control the defense of that portion of the claim. The State may retain control of the defense and settlement of a claim by notifying the Contractor within 10 days after the State's receipt of the Contractor's information requested by the State under clause (ii) of this paragraph, if the State determines that the Contractor has failed to demonstrate to the reasonable satisfaction of the State the Contractor's financial ability to carry out its defense and indemnity obligations under this Section. Any litigation activity on behalf of the State, or any of its subdivisions under this Section, must be coordinated with the Department of Attorney General. In the event the insurer's attorney represents the State under this Section, the insurer's attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

(c) If the Contractor does not deliver a Notice of Election relating to any claim of which it is notified, the State may defend the claim in a manner it deems appropriate, at the cost and expense of the Contractor. If it is determined that the claim was one against which the Contractor was required to indemnify the State, upon request of the State, the Contractor must promptly reimburse the State for all reasonable costs and expenses.

#### **2.15.7 Limitation of Liability**

Neither the Contractor nor the State is liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. This limitation of liability does not apply to claims for infringement of United States patent, copyright, trademark or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to

claims covered by other specific provisions of this Contract calling for liquidated damages; or to court costs or attorneys' fees awarded by a court in addition to damages after litigation based on this Contract.

The Contractor's liability for damages to the State is limited to two times the value of the Contract or \$500,000 whichever is higher. The foregoing limitation of liability does not apply to claims for infringement of United States patent, copyright, trademarks or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of this Contract calling for liquidated damages; or to court costs or attorneys' fees awarded by a court in addition to damages after litigation based on this Contract.

The State's liability for damages to the Contractor is limited to the value of the Contract.

## **2.16 Termination by the State**

### **2.16.1 Notice and Right to Cure**

If the Contractor breaches the Contract, and the State, in its sole discretion, determines that the breach is curable, the State will provide the Contractor notice of the breach and a period of at least 30 days to cure the breach. The State does not need to provide notice or an opportunity to cure for successive or repeated breaches or if the State determines, in its sole discretion, that a breach poses a serious and imminent threat to the health or safety of any person or the imminent loss, damage, or destruction of any real or tangible personal property.

### **2.16.2 Termination for Cause**

(a) The State may fully or partially terminate this Contract for cause by notifying the Contractor if the Contractor: (i) breaches any of its material duties or obligations (including a Chronic Failure to meet any SLA); or (ii) fails to cure a breach within the time period specified in a notice of breach provided by the State.

(b) The Contractor must pay all reasonable costs incurred by the State in terminating this Contract for cause, including administrative costs, attorneys' fees and court costs, and any additional costs the State incurs to procure the Deliverable(s) from other sources. Re-procurement costs are not consequential, indirect, or incidental damages, and cannot be excluded by any other terms otherwise included in this Contract, provided the costs are not in excess of 50% more than the prices for the Deliverable(s).

(c) If the State partially terminates this Contract for cause, any charges payable to the Contractor will be equitably adjusted to reflect those Deliverable(s) that are terminated. The State must pay for all Deliverable(s) for which Final Acceptance has been granted before the termination date. Any services or related provisions of this Contract that are terminated for cause must cease on the effective date of the termination.

(d) If the State terminates this Contract for cause and it is determined, for any reason, that the Contractor was not in breach of the Contract, the termination will be deemed to have been a termination under Section 2.16.3, Termination for Convenience, effective as of the same date, and the rights and obligations of the parties will be limited to those provided in that Section.

### **2.16.3 Termination for Convenience**

The State may fully or partially terminate this Contract for its convenience if the State determines that a termination is in the State's best interest. Reasons for the termination are within the sole discretion of the State and may include: (a) the State no longer needs the Deliverable(s) specified in this Contract; (b) a relocation of office, program changes, or changes in laws, rules, or regulations make the Deliverable(s) no longer practical or feasible for the State; (c) unacceptable prices for Contract changes; or (d) falsification or misrepresentation, by inclusion or non-inclusion, of information material to a response to any RFP issued by the State. The State may terminate this Contract for its convenience by giving Contractor notice at least 30 days before the date of termination. If the State chooses to terminate this Contract in part, any

charges payable to the Contractor must be equitably adjusted to reflect those Deliverable(s) that are terminated.

#### **2.16.4 Termination for Non-Appropriation**

(a) If this Contract extends for more than one fiscal year, continuation of this Contract is subject to the appropriation or availability of funds. If sufficient funds to enable the State to continue payment are not appropriated or otherwise made available, the State must fully or partially terminate this Contract at the end of the last period for which funds have been appropriated or otherwise made available. The State must give the Contractor notice at least 30 days before the date of termination, unless the State receives notice of the non-appropriation or unavailability less than 30 days before the end of the last period for which funds have been appropriated or otherwise made available.

(b) If funding for this Contract is reduced by law, or funds to pay the Contractor for the Deliverable(s) are not appropriated or are otherwise unavailable, the State may, upon 30 days notice to the Contractor, change the Deliverable(s) in the manner and for the periods of time the State may elect. The charges payable under this Contract will be equitably adjusted to reflect any Deliverable(s) not provided because of the reduction.

(c) If the State fully or partially terminates this Contract for non-appropriation, the State must pay the Contractor for all work-in-progress performed through the effective date of the termination to the extent funds are available.

#### **2.16.5 Termination for Criminal Conviction**

The State may terminate this Contract immediately and without further liability or penalty if the Contractor, an officer of the Contractor, or an owner of a 25% or greater share of the Contractor is convicted of a criminal offense related to a State, public, or private Contract or subcontract.

#### **2.16.6 Termination for Approvals Rescinded**

The State may terminate this Contract if any final administrative or judicial decision or adjudication disapproves a previously approved request for purchase of personal services under Constitution 1963, Article 11, § 5, and Civil Service Rule 7-1. In that case, the State will pay the Contractor for all work-in-progress performed through the effective date of the termination. The Contract may be fully or partially terminated and will be effective as of the date stated in the notice.

#### **2.16.7 Rights and Obligations upon Termination**

- (a) If the State terminates this Contract for any reason, the Contractor must:
- (i) stop all work as specified in the notice of termination;
  - (ii) take any action that may be necessary, or that the State may direct, to preserve and protect Deliverable(s) or other State property in the Contractor's possession;
  - (iii) return all materials and property provided directly or indirectly to the Contractor by any entity, agent, or employee of the State;
  - (iv) transfer title in and deliver to the State, unless otherwise directed, all Deliverable(s) intended to be transferred to the State at the termination of the Contract (which will be provided to the State on an "As-Is" basis except to the extent the State compensated the Contractor for warranty services related to the materials);
  - (v) to the maximum practical extent, take any action to mitigate and limit potential damages, including terminating or limiting subcontracts and outstanding orders for materials and supplies; and
  - (vi) take all appropriate action to secure and maintain State information confidentially in accordance with Section 2.11, Confidentiality.

(b) If the State terminates this Contract under Section 2.16.3, Termination for Convenience, the State must pay the Contractor all charges due for Deliverable(s) provided before the date of termination and, if applicable, as a separate item of payment, for work-in-progress, based on a percentage of completion determined by the State. All completed or partially completed Deliverable(s) prepared by the Contractor, at the option of the State, become the State's property, and the Contractor is entitled to receive

equitable compensation for those Deliverable(s). Regardless of the basis for the termination, the State is not obligated to pay or otherwise compensate the Contractor for any lost expected future profits, costs, or expenses incurred with respect to Deliverable(s) not actually completed.

(c) If the State terminates this Contract for any reason, the State may assume, at its option, any subcontracts and agreements for Deliverable(s), and may pursue completion of the Deliverable(s) by replacement contract or as the State deems expedient.

#### **2.16.8 Reservation of Rights**

In the event of any full or partial termination of this Contract, each party reserves all rights or remedies otherwise available to the party.

#### **2.16.9 Contractor Transition Responsibilities**

If this Contract terminates under Section 2.16, Termination by the State, the Contractor must make reasonable efforts to transition the performance of the work, including all applicable equipment, services, software, and leases, to the State or a third party designated by the State within a reasonable period of time that does not exceed 30 days from the date of termination. The Contractor must provide any required reports and documentation.

#### **2.16.10 Transition Payments**

If the transition responsibilities outlined in Section 2.16.9, Contractor Transition Responsibilities, arise based on a termination of this Contract, reimbursement will be governed by the provisions of Section 2.16, Termination by the State. If the transition results from expiration, the Contractor will be reimbursed for all reasonable transition costs (i.e., costs incurred after the expiration within the time period in Section 2.16.9 that result from transition operations) at the Contract rates. The Contractor must prepare an accurate accounting from which the State and the Contractor may reconcile all outstanding accounts.

### **2.17 Termination by the Contractor**

#### **2.17.1 Termination**

If the State breaches the Contract and the Contractor, in its sole discretion, determines that the breach is curable, then the Contractor will provide the State with notice of the breach and a time period (not less than 30 days) to cure the breach.

The Contractor may terminate this Contract if the State: (a) materially breaches its obligation to pay the Contractor undisputed amounts due; (b) breaches its other obligations to an extent that makes it impossible or commercially impractical for the Contractor to complete the Deliverable(s); or (c) does not cure the breach within the time period specified in a notice of breach. The Contractor must discharge its obligations under Section 2.20, Dispute Resolution, before it terminates the Contract.

### **2.18 Stop Work**

#### **2.18.1 Stop Work Order**

The State may, by issuing a Stop Work Order, require that the Contractor fully or partially stop work for a period of up to 90 calendar days, and for any further period to which the parties agree. Upon receipt of the Stop Work Order, the Contractor must immediately take all reasonable steps to minimize incurring costs. Within the period of the Stop Work Order, the State must either: (a) terminate the Stop Work Order; or (b) terminate the work covered by the Stop Work Order as provided in Section 2.16, Termination by the State.

#### **2.18.2 Termination of Stop Work Order**

The Contractor must resume work if the State terminates a Stop Work Order or if it expires. The parties will agree upon an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract must be modified, if: (a) the Stop Work Order results in an increase in the time required for, or

the Contractor's costs properly allocated to, the performance of the Contract; and (b) the Contractor asserts its right to an equitable adjustment within 20 days after the end of the Stop Work Order by submission of a request for adjustment to the State; provided that, the State may receive and act upon the Contractor's request submitted at any time before final payment. Any adjustment will conform to the requirements of Section 2.3.4, Contract Changes.

#### **2.18.3 Allowance of the Contractor's Costs**

If the State fully or partially terminates the work covered by the Stop Work Order, for reasons other than material breach, the termination is a termination for convenience under Section 2.16, Termination by the State, and the State will pay reasonable costs resulting from the Stop Work Order in arriving at the termination settlement. The State is not liable to the Contractor for lost profits because of a Stop Work Order issued under Section 2.18, Stop Work.

#### **2.19 Reserved**

#### **2.20 Dispute Resolution**

##### **2.20.1 General**

(a) The Contractor must submit any claim related to this Contract to the State under Section 2.3.6, Notices, together with all supporting documentation for the claim.

(b) The representatives of the Contractor and the State must meet as often as the parties reasonably deem necessary to gather and furnish to each other all information related to the claim.

(c) During the course of negotiations, each party will honor all reasonable requests made by the other for non-privileged information reasonably related to the claim.

##### **2.20.2 Informal Dispute Resolution**

(a) If, after a reasonable time following submission of a claim under Section 2.20.1, General, the parties are unable to resolve the claim, the parties must meet with the Procurement Manager of MDOC-Procurement, or his or her designee, for the purpose of attempting to resolve the dispute without the need for formal legal proceedings.

(b) Within 60 calendar days of the meeting with the Manager of MDOC-Procurement, or such other time as agreed to by the parties, the Manager of MDOC-Procurement will issue a written recommendation regarding settlement of the claim. The Contractor must notify MDOC-Procurement within 21 days after the recommendation is issued whether the Contractor accepts or rejects the recommendation. Acceptance by the Contractor constitutes the final resolution of the claim addressed in the recommendation, and the Contractor may not assert that claim in any future litigation or other proceeding between the parties.

(c) The recommendation of the Manager of MDOC-Procurement is not admissible in any future litigation or other proceeding between the parties. The conduct and statements made during the course of negotiations or dispute resolution under Section 2.20, Dispute Resolution, are subject to Michigan Rule of Evidence 408 and are not admissible in any future litigation or other proceeding between the parties.

(d) This section will not be construed to prohibit either party from instituting formal proceedings to avoid the expiration of any applicable limitations period, to preserve a superior position with respect to other creditors, or under Section 2.20.3, Injunctive Relief.

(e) MDOC-Procurement will not mediate disputes between the Contractor and any other entity, except State agencies, concerning responsibility for performance of work.

##### **2.20.3 Injunctive Relief**

A claim between the State and the Contractor is not subject to the provisions of Section 2.20.2, Informal Dispute Resolution, where a party makes a good faith determination that a breach of the Contract by the other party will result in damages so immediate, so large or severe, and so incapable of adequate redress that a temporary restraining order or other injunctive relief is the only adequate remedy.

#### 2.20.4 Continued Performance

Each party will continue performing its obligations under the Contract while a claim is being resolved, except to the extent the claim precludes performance and without limiting either party's right to terminate the Contract as provided in Section 2.16, Termination by the State or Section 2.17, Termination by the Contractor. A claim involving payment does not preclude performance.

#### 2.21 Disclosure Responsibilities

##### 2.21.1 Disclosure of Litigation

(a) Within 30 days after receiving notice of any litigation, investigation, arbitration, or other proceeding (collectively, "Proceeding") that arises during the term of this Contract, the Contractor must disclose the following to the Contract Administrator:

- (i) A criminal Proceeding involving the Contractor (or any Subcontractor) or any of its officers or directors;
- (ii) A parole or probation Proceeding;
- (iii) A Proceeding involving the Contractor (or any Subcontractor) or any of its officers or directors under the Sarbanes-Oxley Act; and
- (iv) A civil Proceeding to which the Contractor (or, if the Contractor is aware, any Subcontractor) is a party, and which involves (A) a claim that might reasonably be expected to adversely affect the viability or financial stability of the Contractor or any Subcontractor; or (B) a claim or written allegation of fraud against the Contractor (or, if the Contractor is aware, any Subcontractor) by a governmental or public entity arising out of the Contractor's business dealings with governmental or public entities.

(b) Information provided to the State from the Contractor's publicly filed documents will satisfy the requirements of this Section.

(c) If any Proceeding that is disclosed to the State or of which the State otherwise becomes aware, during the term of this Contract, would cause a reasonable party to be concerned about: (i) the ability of the Contractor (or a Subcontractor) to continue to perform this Contract; or (ii) whether the Contractor (or a Subcontractor) is engaged in conduct that is similar in nature to the conduct alleged in the Proceeding and would constitute a breach of this Contract or a violation of federal or state law, regulations, or public policy, then the Contractor must provide the State all requested reasonable assurances that the Contractor and its Subcontractors will be able to continue to perform this Contract.

##### 2.21.2 Other Disclosures

The Contractor must notify MDOC-Procurement within 30 days of:

- (a) becoming aware that a change in the Contractor's ownership or officers has occurred or is certain to occur; or
- (b) any changes to company affiliations.

##### 2.21.3 Call Center Disclosure

The Contractor and all Subcontractors involved in the performance of this Contract providing call or contact center services to the State must disclose the location of its call or contact center services to inbound callers. Failure to disclose this information is a material breach of this Contract.

#### 2.22 Extended Purchasing Program

##### 2.22.1 Extended Purchasing Program – Deleted, Not Applicable

#### 2.23 Laws

#### **2.23.1 Governing Law**

This Contract is governed by, and construed according to, the substantive laws of the State of Michigan without regard to any Michigan choice of law rules that would apply the substantive law of another jurisdiction to the extent not inconsistent with or preempted by federal law.

#### **2.23.2 Compliance with Laws**

The Contractor must comply with all applicable federal, state, and local laws and ordinances in providing the Deliverable(s).

#### **2.23.3 Jurisdiction**

Any dispute arising from the Contract must be resolved in the State of Michigan. With respect to any claim between the parties, the Contractor consents to venue in Ingham County, Michigan, and irrevocably waives any objections to this venue that it may have, such as lack of personal jurisdiction or *forum non conveniens*. The Contractor must appoint agents in the State of Michigan to receive service of process.

#### **2.23.4 Nondiscrimination**

In the performance of the Contract, the Contractor agrees not to discriminate against any employee or applicant for employment, with respect to his or her hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex, height, weight, marital status, or physical or mental disability. The Contractor further agrees that every subcontract entered into for the performance of this Contract will contain a provision requiring non-discrimination in employment, as specified here, binding upon each Subcontractor. This covenant is required under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq.*, and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq.*, and any breach of this provision may be regarded as a material breach of the Contract.

#### **2.23.5 Unfair Labor Practices**

Under 1980 PA 278, MCL 423.321, *et seq.*, the State must not award a Contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled under MCL 423.322. This information is compiled by the United States National Labor Relations Board. A Contractor of the State, in relation to the Contract, must not enter into a contract with a Subcontractor, manufacturer, or supplier whose name appears in this register. Under MCL 423.324, the State may void any Contract if, after award of the Contract, the name of the Contractor as an employer or the name of the Subcontractor, manufacturer or supplier of the Contractor appears in the register.

#### **2.23.6 Environmental Provision**

For the purposes of this section, "Hazardous Materials" include asbestos, ACBMs, PCBs, petroleum products, construction materials including paint thinners, solvents, gasoline, oil, and any other material the manufacture, use, treatment, storage, transportation or disposal of which is regulated by the federal, state, or local laws governing the protection of the public health, natural resources, or the environment:

(a) The Contractor must use, handle, store, dispose of, process, transport, and transfer any Hazardous Material according to all federal, State, and local laws. The State must immediately advise the Contractor of the presence of any known Hazardous Material at the work site. If the Contractor encounters material reasonably believed to be Hazardous Material that may present a substantial danger, the Contractor must: (i) immediately stop all affected work; (ii) notify the State in accordance with Section 2.3.6, Notices; (iii) notify any entities required by law; and (iv) take appropriate health and safety precautions.

(b) The State may issue a Stop Work Order if the material is a Hazardous Material that may present a substantial danger and the Hazardous Material was not brought to the site by the Contractor, or does not wholly or partially result from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Materials. The State may



remove the Hazardous Material, render it harmless, or terminate the affected work for the State's convenience.

(c) If the Hazardous Material was brought to the site by the Contractor, or wholly or partially results from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Material, or from any other act or omission within the control of the Contractor, the Contractor must bear its proportionate share of the delay and costs involved in cleaning up the site and removing and rendering harmless the Hazardous Material according to applicable laws.

#### **2.23.7 Freedom of Information**

This Contract and all information submitted to the State by the Contractor is subject to the Michigan Freedom of Information Act (FOIA), 1976 PA 442, MCL 15.231, *et seq.*

#### **2.23.8 Reserved**

#### **2.23.9 Reserved**

#### **2.23.10 Abusive Labor Practices**

The Contractor may not furnish any Deliverable(s) that were produced fully or partially by forced labor, convict labor, forced or indentured child labor, or indentured servitude.

“Forced or indentured child labor” means all work or service (1) exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or (2) performed by any person under the age of 18 under a contract the enforcement of which can be accomplished by process or penalties.

### **2.24 General Provisions**

#### **2.24.1 Bankruptcy and Insolvency**

The State may, without prejudice to any other right or remedy, fully or partially terminate this Contract and, at its option, take possession of the work-in-progress and finish the work-in-progress by whatever method the State deems appropriate if:

- (a) the Contractor files for bankruptcy protection;
- (b) an involuntary petition is filed against the Contractor and not dismissed within 30 days;
- (c) the Contractor becomes insolvent or a receiver is appointed due to the Contractor's insolvency;
- (d) the Contractor makes a general assignment for the benefit of creditors; or
- (e) the Contractor or its affiliates are unable to provide reasonable assurances that the Contractor or its affiliates can provide the Deliverable(s) under this Contract.

Contractor will place appropriate notices or labels on the work-in-progress to indicate ownership by the State. To the extent reasonably possible, work-in-progress must be stored separately from other stock and marked conspicuously with labels indicating State ownership.

#### **2.24.2 Media Releases**

News releases (including promotional literature and commercial advertisements) pertaining to the RFP and this Contract or the project to which it relates will not be made without prior approval by the State, and only in accordance with the instructions from the State.

#### **2.24.3 Contract Distribution**

MDOC-Procurement retains the sole right of Contract distribution to all State agencies and local units of government unless other arrangements are authorized by MDOC-Procurement.

#### **2.24.4 Permits**

Contractor must obtain and pay any associated costs for all required governmental permits, licenses, and approvals for the delivery, installation, and performance of the Contract.

#### **2.24.5 Website Incorporation**

The State is not bound by any content on the Contractor's website unless incorporated directly into this Contract.

#### **2.24.6 Reserved**

#### **2.24.7 Antitrust Assignment**

The Contractor assigns to the State any claim for overcharges resulting from state or federal antitrust violations to the extent that those violations concern materials or services supplied by third parties toward fulfillment of the Contract.

#### **2.24.8 Disaster Recovery**

Contractor and the State recognize that the State provides essential services in times of natural or man-made disasters. Therefore, except as mandated by federal disaster response requirements, Contractor personnel dedicated to providing Deliverable(s) under this Contract will provide the State with priority.

#### **2.24.9 Legal Effect**

The State is not liable for costs incurred by the Contractor or for payment(s) under this Contract until the Contractor is authorized to perform under Section 1.2.4, Ordering.

#### **2.24.10 Entire Agreement**

This Contract constitutes the entire agreement between the parties and supersedes all prior agreements, whether written or oral, with respect to the subject matter. All attachments referenced in this Contract are incorporated in their entirety and form part of this Contract.

#### **2.24.11 Order of Precedence**

Any inconsistency in the terms associated with this Contract will be resolved by giving precedence to the terms in the following descending order:

(a) Mandatory sections (2.1.1, Contract Term, 2.24.9, Legal Effect, 2.2.2, Payment Deadlines, 2.14, Insurance, 2.15, Indemnification, 2.16, Termination, 2.23, Governing Law, 2.15.7, Limitation of Liability);

(b) The most recent Statement of Work related to this Contract;

(c) All sections from Article 2 - Terms and Conditions, not listed in subsection (a);

(d) Any attachment or exhibit to the Contract documents;

(e) Any Purchase Order, Direct Voucher, or Procurement Card Order issued under the Contract;  
and

(f) Bidder Responses contained in any of the RFP documents.

#### **2.24.12 Headings**

The captions and section headings used in this Contract are for convenience only and may not be used to interpret the scope and intent of this Contract.

#### **2.24.13 Form, Function and Utility**

If this Contract is for statewide use, but the Deliverable(s) does not meet the form, function, and utility required by a State agency, that agency may, subject to State purchasing policies, procure the Deliverable(s) from another source.

**2.24.14 Reformation and Severability**

Each provision of the Contract is severable from all other provisions of the Contract. If any provision of this Contract is held unenforceable, then the Contract will be modified to reflect the parties' original intent. All remaining provisions of the Contract remain in full force and effect.

**2.24.15 Approval**

Unless otherwise provided in this Contract, approval(s) must be in writing and must not be unreasonably withheld or delayed.

**2.24.16 No Waiver of Default**

Failure by a party to insist upon strict adherence to any term of the Contract does not waive that party's right to later insist upon strict adherence to that term, or any other term, of the Contract.

**2.24.17 Survival**

The provisions of this Contract that impose continuing obligations, including warranties, indemnification, and confidentiality, will survive the expiration or termination of this Contract.

**Attachment A, Price Proposal**

LINE ITEM	ESTIMATED 3 YEAR USAGE	UNIT OF MEASURE	DESCRIPTION	UNIT COST
001	420,000	Yards	MESH NETTING FABRIC, 100% POLYESTER  MINIMUM: 1/4" MESH OPENINGS, MAXIMUM: 3/8" MESH OPENINGS  MESH OPENINGS MUST BE ROUND OR SQUARE  250/1000 DENIER YARN, TIGHT WEAVE  FINISHED WEIGHT: 6.0 - 6.5 OZ. PER SQUARE YARD  BURSTING STRENGTH: 152 LBS. (MINIMUM)  FINISHED WIDTH: 48" WIDE  MUST HAVE AT LEAST ONE SELVAGE EDGE  COLOR: WHITE (SIMILAR TO PANTONE COLOR 11601 BRIGHT WHITE)  APPROX. 85 - 95 LINEAR YD. PUT UP PER ROLL	\$1.64